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Florida's Fight Against Prescription Drug Abuse: Prescription Drug Monitoring Program

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FLORIDA'S FIGHT AGAINST PRESCRIPTION DRUG ABUSE: PRESCRIPTION DRUG MONITORING PROGRAM

ASHLEY DUTKO*

I.	INTRODUCTION.....	739
II.	HISTORICAL BACKGROUND	741
	A. <i>Prescription Drug Abuse</i>	741
	1. Doctor Shopping.....	743
	2. Pill Mills	744
	B. <i>Florida: A Magnet for Doctor Shoppers and Pill Mills</i>	745
	1. Intrastate Problem	745
	2. Interstate Problem	745
	C. <i>The Need for Regulation</i>	747
	1. Prescription Drug Monitoring Programs.....	747
	2. How Florida Measures Up.....	748
III.	SECTION 893.055	750
	A. <i>Legislative History</i>	750
	B. <i>Prescription Drug Validation Program</i>	751
	C. <i>Rulemaking Authority</i>	754
IV.	OPPONENTS OF SECTION 893.055.....	754
	A. <i>The Critics' Perspectives</i>	754
	1. Virginia Hacker.....	755
	2. Other Potential Loopholes in Section 893.055	757
	B. <i>Alternative Options: Biometric Identification</i>	758
V.	LOOKING FORWARD.....	760
VI.	CONCLUSION	762

I. INTRODUCTION

“Joe Druggie” visits Pain Clinic X complaining of minor back pain.¹ A prescription is written. Within minutes, he arrives at Pain Clinic Y with the

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same “pain” complaints. Another prescription is issued. After filling the two prescriptions at different pharmacies, he walks into Pain Clinic Z, which is owned by a non-doctor with a criminal record, and receives an on-site distribution of pain medication. Can this type of “doctor shopping” happen in Florida? For now, yes.² However, strict enforcement of new legislation may help control such widespread “doctor shopping” in Florida.³

On June 18, 2009, a hopeful Charlie Crist, Governor of Florida, signed legislation designed to halt the rising problem of prescription drug abuse in the State of Florida.⁴ Section 893.055 of the *Florida Statutes*—Prescription Drug Monitoring Program—requires the Department of Health to design and implement a comprehensive state-wide electronic database system “to prevent the inadvertent, improper, or illegal use of controlled substances.”⁵ After a decade of increasing prescription drug misuse and abuse, Florida became the thirty-ninth state to implement such a system.⁶

Providing a general analysis of section 893.055 of the *Florida Statutes*, this article will trace the rise of prescription drug abuse in Florida and give insight into Florida’s fight against this problem. Part II of this article will begin by familiarizing the reader with a background of prescription drug abuse, and introducing the specific prescription drug diversion methods of doctor shopping and pill mills. Part II will then address how Florida, in par-

1. See R. Kenneth Bluh, *Prescription Drug Registry Brings Florida into 21st Century*, SOUTH MIAMI NEWS, Jan. 12, 2010, at 6, available at http://www.communitynewspapers.com/html/index.php?option=com_wrapper&Itemid=1552.

2. *Id.*

3. See Act effective July 1, 2009, ch. 2009-198, 2009 Fla. Laws 1978, 1978 (codified at FLA. STAT. § 893.055 (2009)); Bluh, *supra* note 1.

4. See FLA. STAT. § 893.055 (2009); see also Bob LaMendola, *Governor Signs Law to Rein in Pain Clinics—New Database Aims to Curb Pill Shopping*, SUN-SENTINEL, June 19, 2009, at 1A [hereinafter LaMendola, *Governor Signs Law*]. Codified as section 893.055 of the *Florida Statutes*, Senate Bill 462—Prescription Drug Monitoring Program—declares:

WHEREAS, while the importance and necessity of the proper prescribing, dispensing, and monitoring of controlled substances, particularly pain medication, have been established, controlled prescription drugs are too often diverted in this state, often through fraudulent means, including outright theft, phony pharmacy fronts, loose Internet medical evaluations, and inappropriate importation; in addition, there is a criminal element that facilitates the prescription drug abuse epidemic through illegal profitmaking from the diversion of certain controlled substances that are prescribed or dispensed by physicians, health care practitioners, and pharmacists

Ch. 2009-198, 2009 Fla. Laws at 1980.

5. Fla. S. Comm. on Controlled Substances/Prescription Monitoring, CS for SB 462 (2009) Staff Analysis 1 (Mar. 6, 2009), available at <http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s0462.hr.pdf> [hereinafter CS for SB 462 Staff Analysis]. As “part of a prescription drug validation program,” the system will contain data regarding controlled substance prescriptions provided to it by pharmacies and dispensers. *Id.*

6. See LaMendola, *Governor Signs Law*, *supra* note 4.

ticular, contributes substantially to the dismal statistics of prescription drug abuse. By the end of Part II, this article will illustrate why strong measures need to be implemented to regulate prescription drug abuse in Florida. Then, Part III will introduce the reader to the legislative history and enactment of section 893.055. Specifically, the article will discuss the purpose and components of the new legislation designed to combat the prescription drug war. Part IV of this article will then view section 893.055 from critics' perspectives, including alternative measures and possible downsides to the new legislation. Part V of this article will discuss what the future holds for those affected by section 893.055. Finally, Part VI will conclude the analysis of section 893.055.

II. HISTORICAL BACKGROUND

A. Prescription Drug Abuse

According to the National Institute on Drug Abuse, the Nation's rising drug problem lies not merely in the use of illegal substances, but even more so in the illegal misuse and abuse of legal prescription drugs for nonmedical use.⁷ According to a 2008 drug report from the Florida Medical Examiners Commission, lethal amounts of prescription drugs are found in deceased persons more often than illicit drugs.⁸ Although managing pain through narcotics is a legal medical practice and can be done responsibly,⁹ excessive use of prescription drugs alters brain activity, leading to abuse, addiction and dependence.¹⁰ The National Institute on Drug Abuse lists the three most commonly abused classes of prescription drugs: opioids, central nervous system depressants, and stimulants.¹¹ More commonly referred to by their "street names," these drugs include OxyContin, Vicodin, Demorol, Valium, Xanax,

7. See NAT'L INST. ON DRUG ABUSE, U.S. DEP'T OF HEALTH & HUMAN SERVS., RESEARCH REPORT SERIES: PRESCRIPTION DRUGS: ABUSE AND ADDICTION 1 (2005), available at <http://www.drugabuse.gov/ResearchReports/Prescription/Prescription.html> [hereinafter NIDA]; see also *Prescription Drugs: State Monitoring Programs May Help to Reduce Illegal Diversion: Hearing Before the Subcomm. on Health Comm. on Energy and Commerce*, 108th Cong. 1 (2004) (Statement of Marcia Crosse, Director, Public Health and Military Health Care Issues) [hereinafter *Prescription Drugs Hearing*].

8. MED. EXAM'RS COMM'N, FLA. DEP'T OF LAW ENFORCEMENT, DRUGS IDENTIFIED IN DECEASED PERSONS 2008 REPORT ii (2009), available at <http://www.fdle.state.fl.us/Content/getdoc/a37959db-85e0-42f9-b6d6-cdef532f22f8/2008DrugReport.aspx>.

9. See NIDA, *supra* note 7, at 1; see also Scott Hiaasen, *Inside Broward's Pill Mills*, MIAMI HERALD, Apr. 5, 2009, at 1A [hereinafter Hiaasen, *Inside Broward's Pill Mills*].

10. NIDA, *supra* note 7, at 1.

11. *Id.*

and Ritalin.¹² Long-term abuse of opioids, typically prescribed to manage pain, and depressants, prescribed to treat anxiety and sleep disorders, leads to physical dependence and addiction.¹³ Similarly, high doses of stimulants may lead to compulsive use, paranoia, “dangerously high body temperature, and an irregular heartbeat.”¹⁴

A recent survey from the Substance Abuse and Mental Health Services Administration indicates that “7.0 million . . . persons aged 12 or older . . . used prescription-type psychotherapeutic drugs nonmedically in the past month.”¹⁵ Nonmedical use is defined by the Substance Abuse and Health Services Administration to mean “the use of prescription-type drugs not prescribed for the respondent by a physician or used only for the experience or feeling they caused.”¹⁶ Second only to marijuana use, nonmedical prescription drug use is one of the most common forms of drug abuse in the United States.¹⁷ With percentages of the population using such prescription drugs for nonmedical purposes starting at a low of 2.48% in the District of Columbia, that number climbs to 7.92% in Florida.¹⁸

Aside from the staggering number of prescription drug abusers, the amount of deaths from the misuse and overuse of these drugs is quickly becoming equally astounding, particularly in Florida.¹⁹ Experts note a “107 percent jump in oxycodone deaths [in Florida] in two years.”²⁰ According to the Florida Medical Examiners Commission, “Some traces of oxycodone were found in 1253 overdoses in 2007. Oxycodone-related overdoses continued to climb in . . . 2008.”²¹ With deaths from prescription drugs averaging about 8.6 deaths per day, prescription drug abuse has become a grave problem.²²

12. *See id.* at 2–4.

13. *See id.*

14. *Id.* at 4.

15. Fla. H.R. Comm. on Controlled Substances, CS for HB 897 (2009) Staff Analysis 4 (Apr. 21, 2009), available at <http://www.flsenate.gov/data/session/2009/House/bills/analysis/pdf/h0897f.CGHC.pdf> [hereinafter CS for HB 897 Staff Analysis]; *see also* OFFICE OF APPLIED STUDIES, U.S. DEPT. OF HEALTH & HUMAN SERVS., SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., THE NSDUH REPORT: NONMEDICAL USE OF PAIN RELIEVERS IN SUBSTANCE REGIONS: 2004 TO 2006 (June 19, 2008) [hereinafter NSDUH REPORT].

16. NSDUH REPORT, *supra* note 15.

17. *Id.*

18. *Id.*

19. Hiaasen, *Inside Broward's Pill Mills*, *supra* note 9.

20. *Id.* George Hime, the Assistant Director of Toxicology for the Miami-Dade County Medical Examiner's Office called the rate of overdoses “incredible” and warned, “It is the new epidemic of drug abuse.” *Id.*

21. *Id.*

22. *See* CS for HB 897 Staff Analysis, *supra* note 15, at 5.

What is the reason for this increasing “diversion of prescription drugs for illegal purposes or abuse”?²³ According to Dr. Nora D. Volkow, the Director of the National Institute on Drug Abuse, “[A]ccessibility [to prescription drugs] is likely a contributing factor.”²⁴ While prescription drug diversion activities can come in many forms, the two most common sources of the problem are doctor shopping and pill mills.²⁵

1. Doctor Shopping

Through a method known as doctor shopping, drug users continuously switch physicians, obtaining excessive amounts of prescription drugs.²⁶ After obtaining the prescription drugs, doctor shoppers either take the medication themselves or sell the pills for a lucrative profit.²⁷ Doctor shoppers sometimes start out with legitimate medical needs, but become dependent on the drugs, thereby seeking more and more drugs to feed their addiction.²⁸ Other doctor shoppers may fraudulently obtain prescription drugs for non-medical recreational use.²⁹ In doing so, the drug seekers use forged medical records, fake test results, or fake identification to justify their needs for prescriptions.³⁰ Finally, the purely profit-driven doctor shoppers may obtain prescriptions only to turn around and sell them to other drug users for a higher price.³¹ Regardless of the motive, without a record of the prescriptions, prescribing doctors or pharmacists may be unaware of the patient's additional active prescriptions.³² Thus, addicts and drug dealers posing as patients with legitimate medical needs are able to take advantage of the system.³³

23. *Prescription Drugs Hearing*, *supra* note 7, at 1.

24. NIDA, *supra* note 7, at 1 (emphasis added).

25. See CS for HB 897 Staff Analysis, *supra* note 15, at 3.

26. *Id.* According to the United States General Accounting Office, “[d]iversion activities can include ‘doctor shopping’ by individuals who visit numerous physicians to obtain multiple prescriptions, illegal sales of prescription drugs by physicians or pharmacists, prescription forgery, and purchasing drugs from Internet pharmacies without valid prescriptions.” *Prescription Drugs Hearing*, *supra* note 7, at 1.

27. See Vanessa Blum, *These ‘Tourists’ Seek Pain Drugs*, ORLANDO SENTINEL, Dec. 4, 2006, at B7. Prescription pills like oxycodone can sell for “almost 10 times what they cost at a pharmacy.” *Id.*

28. See CS for HB 897 Staff Analysis, *supra* note 15, at 3.

29. *Id.* at 3–4.

30. Scott Hiaasen, *Pills from S. Fla. Flood Appalachian States*, MIAMI HERALD, Apr. 6, 2009, at 1A [hereinafter Hiaasen, *Appalachian States*].

31. *Id.*

32. See CS for HB 897 Staff Analysis, *supra* note 15, at 3.

33. See *id.*

2. Pill Mills

Adding to the Black Market sale of illegal prescription drugs are pain clinics that deal out prescriptions without thoroughly examining patients.³⁴ At these pill mills, doctors—“dispensing practitioners”—have special authority to dispense the controlled substances *directly* to the patients, without any pharmacist intervention.³⁵ Describing a typical “pill mill,” investigators say that many are now “disguised as independent pain-management centers.”³⁶ Furthermore, certain “signs” make pill mills distinguishable: cash only, no physical exams, treatment with pills only from “their” pharmacy, and huge crowds of people waiting to be seen.³⁷

As an example, in *Deonarine v. State*,³⁸ the defendant, a physician, was convicted of drug trafficking in a controlled substance after evidence revealed that he wrote multiple prescriptions for controlled substances in bad faith.³⁹ Following the death of one of the defendant’s patients from a drug overdose, suspicious law enforcement officials reviewed the pharmacy and medical records of the patient and began investigating the defendant.⁴⁰ One patient’s testimony revealed that the defendant “did not review her general medical history, . . . did not inquire about her limitations in activity, and did not discuss alternatives to pain medication.”⁴¹ Subsequently, after severing the doctor-patient relationship with the patient, the defendant continued to write regular prescriptions for the patient, even increasing the patient’s prescription doses.⁴² Furthermore, evidence showed that the defendant was *aware* that the patient “was using multiple pharmacies to fill the prescriptions.”⁴³ This incident, which occurred in South Florida, reveals the “dangers of prescription drug abuse.”⁴⁴ Furthermore, although *Deonarine* exemplifies Florida’s awareness and efforts to restrain prescription drug abuse,⁴⁵ how successful are these measures in curbing such illegal activity?

34. Hiaasen, *Inside Broward’s Pill Mills*, *supra* note 9 (discussing how investigators predict many of these pill mills “feed narcotics to 65 patients a day or more”).

35. *Id.*

36. What’s a Pill Mill?, <http://www.cbsnews.com/blogs/2007/05/31/primarysource/entry2872835.shtml> (May 31, 2007).

37. *Id.*

38. 967 So. 2d 333 (Fla. 4th Dist. Ct. App. 2007).

39. *Id.* at 335–36.

40. *Id.* at 334.

41. *Id.* at 335.

42. *Id.*

43. *Deonarine*, 967 So. 2d at 335.

44. *Id.* at 334.

45. *Id.*

B. *Florida: A Magnet for Doctor Shoppers and Pill Mills*

1. Intrastate Problem

While abuse of prescription drugs is a nationwide problem, the Drug Enforcement Administration specifically notes the high concentration of doctor shopping and pill mills in Florida.⁴⁶ The Drug Enforcement Administration estimates that in the past year, the number of pain clinics in Florida—South Florida in particular—has skyrocketed from 60 to 150.⁴⁷ Furthermore, within six months in 2008, Broward County doctors dispensed upwards of 6.5 million oxycodone pills, which equals roughly “four pills for every Broward resident.”⁴⁸ According to additional data from the Drug Enforcement Administration, Florida distributes more oxycodone than any other state.⁴⁹ Mark Trouville, a Drug Enforcement Administration special agent, discussed how just forty-five doctors in South Florida dispensed about nine million oxycodone pills in six months.⁵⁰ Dr. Charles Grudem, a board member of the Florida Society of Interventional Pain Physicians, calls this behavior “[t]otally suspicious.”⁵¹

Furthermore, prescription drug overdoses in Florida alone climbed from 2780 in 2006, to 3317 in 2007, to about 4000 in 2008.⁵² According to experts, “[T]he growth in unscrupulous pain clinics is contributing to a rise in prescription drug overdoses.”⁵³ Furthermore, police reported that over “4,000 Floridians died from prescription drug overdoses last year, about 11 a day, up by 20 percent over the year before.”⁵⁴

2. Interstate Problem

Florida pill mills and doctor shopping do not stop at state borders.⁵⁵ Rather, “travelers come [to Florida] by the thousands, narcotics investigators

46. *What's a Pill Mill?*, *supra* note 36.

47. Hiaasen, *Inside Broward's Pill Mills*, *supra* note 9. With Broward County alone having eighty-nine pain clinics, Hollywood Police Captain, David Siegel, stated, “Broward County has become the Colombia for pharmaceutically diverted drugs.” *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Hiaasen, *Inside Broward's Pill Mills*, *supra* note 9.

52. Bob LaMendola, *Profiting from Pain: Clinics Face Scrutiny*, SUN-SENTINEL, Apr. 7, 2009, at 1A [hereinafter LaMendola, *Profiting from Pain*].

53. *Id.*

54. *Id.*

55. See Hiaasen, *Appalachian States*, *supra* note 30. Rick Zenuch, an agent with the Florida Department of Law Enforcement, stated, “We’ve seen people coming from all over

say, from Kentucky, Ohio, West Virginia, Massachusetts and other states”⁵⁶ because of Florida’s “lax oversight of prescription drugs.”⁵⁷ This “‘drug run’ phenomenon in South Florida”⁵⁸ contributes to the “startling rise in prescription-drug overdose deaths in Florida, including [the] 107 percent jump in oxycodone deaths in two years.”⁵⁹

In April 2009, a sting operation dubbed “Operation Pill Crusher,” involving both state police and officers from the Drug Enforcement Administration, resulted in the arrest of two dozen alleged drug dealers who traveled from Kentucky to Florida to obtain prescription drugs from Florida’s pill mills.⁶⁰ Charged with “trafficking in a controlled substance,” these individuals are only a handful of the thousands of Kentuckians suspected of traveling to South Florida to obtain prescription drugs.⁶¹

A recent Miami Herald article reported that “Dr. Roger Browne was once one of Kentucky’s most popular pain doctors.”⁶² No startling fact—however—until one considers that Dr. Browne’s office was over eight hundred miles away from Kentucky.⁶³ In fact, Dr. Browne’s pain clinic, Americare Health and Rehabilitation, was located in Coral Springs, Florida.⁶⁴ Dr. Browne’s pain clinic is just one of the many Florida pain clinics that has become popular with out-of-state patients.⁶⁵ For instance, some Florida pain clinics post signs boasting such obvious tip-offs as “Out of State Patients Welcome” and “No Wait for Walk-Ins.”⁶⁶ These pill mills lure drug seekers with promises of on-site drug dispensing, “with coupons and discounts advertised in the back pages of alternative weekly newspapers, or on bus benches and billboards,” and even with gasoline vouchers for travelers.⁶⁷ With such sales tactics as these, it is no wonder why out-of-state drug seekers and addicts travel across the country to obtain prescription drugs from Florida pain clinics.

the Southeast United States The fact is, illicit-drug traffickers don’t see state lines as any boundary.” Blum, *supra* note 27.

56. Hiaasen, *Inside Broward’s Pill Mills*, *supra* note 9.

57. Blum, *supra* note 27. Furthermore, “[t]he unwanted tourism alarms state officials who have watched deaths from prescription pain medication skyrocket in recent years.” *Id.*

58. *Id.*

59. Hiaasen, *Inside Broward’s Pill Mills*, *supra* note 9.

60. Valerie Honeycutt Spears, *24 Drug Arrests in Interstate Sting*, MIAMI HERALD, Apr. 16, 2009, at 1A [hereinafter Honeycutt Spears, *24 Drug Arrests in Interstate Sting*].

61. *Id.*

62. Hiaasen, *Appalachian States*, *supra* note 30.

63. *Id.*

64. *Id.*

65. *Id.*

66. Hiaasen, *Inside Broward’s Pill Mills*, *supra* note 9.

67. *Id.*

C. *The Need for Regulation*

With the rampant spread of prescription drug abuse, many states have implemented strict monitoring programs or criminal punishments for doctor shoppers and pill mill participants.⁶⁸ Concerned not just with the overdosing of particular prescription drugs, experts are also worried about the dangerous effects of combining different prescription drugs, such as Methadone, Xanax, Valium, and Oxycodone.⁶⁹ The improper dispensing, misuse, or diversion of prescription drugs can be deadly, especially when a pharmacist or practitioner is unaware of a patient's prescription drug medication history.⁷⁰

1. Prescription Drug Monitoring Programs

Although prescription drug abuse and deaths have become a major problem in Florida, until recently, Florida lacked a prescription drug monitoring program.⁷¹ Sergeant Lisa McElhaney of the Broward Sheriff's Office commented, "We are source-supplying many other states. This is literally embarrassing."⁷² The [Florida] system has enabled this."⁷³ Before June of 2009, Florida was one of only twelve states that lacked a database to regulate prescription drugs.⁷⁴ Many individuals postulate that the reason drug dealers are making thousands of dollars for each trip to Florida is because Florida lacks a tracking system.⁷⁵ Representative Kelly Skidmore of Boca Raton, Florida, one of the co-sponsors of a proposed drug monitoring bill, commented, "Shame on us for letting it get this far. . . . We don't want every other state to view Florida as the pharmacy for illegal pain medications."⁷⁶ Additionally, prescription drug abuse and "diversion hurts [Florida] significantly in terms of lost lives, increased crime, human misery from addiction,

68. See *Prescription Drugs Hearing*, *supra* note 7, at 1–2.

69. See generally NIDA, *supra* note 7 (discussing how certain prescription drugs should not be mixed).

70. See Act effective July 1, 2009, ch. 2009-198, 2009 Fla. Laws 1978, 1980–81 (codified at FLA. STAT. § 893.055 (2009)).

71. See LaMendola, *Governor Signs Law*, *supra* note 4.

72. Hiaasen, *Inside Broward's Pill Mills*, *supra* note 9. Without a system to detect and control prescription drug abuse, regulators and police have insufficient resources to control the drug problem. See *id.*

73. *Id.*

74. LaMendola, *Profiting from Pain*, *supra* note 52.

75. Hiaasen, *Inside Broward's Pill Mills*, *supra* note 9.

76. *Id.*

and ballooning health care costs connected to treatment, medical expenses, and Medicaid fraud that all Floridians ultimately bear.”⁷⁷

In the thirty-eight other states that have enacted prescription-drug-monitoring programs, prescription data is electronically monitored and available for review and analysis for educational, public health, and investigational purposes.⁷⁸ While each state’s systems enact slightly different rules and procedures, the drug-monitoring programs’ “primary goal[s] [are] to identify forged prescriptions and to expose so-called doctor shoppers who visit multiple physicians and pharmacies seeking drugs . . . [by requiring] doctors to submit [prescription] information . . . to a centralized database.”⁷⁹

2. How Florida Measures Up

Chapter 893 of *Florida Statutes*, the Florida Comprehensive Drug Abuse Prevention and Control Act, classifies controlled substances “into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances.”⁸⁰ Section 893.04, pertaining to pharmacists, authorizes pharmacists “in good faith and in the course of professional practice only, [to] dispense controlled substances upon a written or oral prescription of a practitioner” under specified conditions.⁸¹ Furthermore, prescriptions for controlled substances must include the date, signature of the prescribing practitioner, and other relevant information about the patient and the prescription.⁸² A similar section, section 893.05, pertaining to practitioners, allows such practitioners “in good faith and in the course of his or her professional practice only, [to] prescribe, administer, dispense, mix, or otherwise prepare a controlled substance.”⁸³

77. Act Effective July 1, 2009, ch. 2009-198, 2009 Fla. Laws 1978, 1980 (codified at FLA. STAT. §893.055 (2009)).

78. See Blum, *supra* note 27. For example, Kentucky, after a history of prescription drug abuse, created KASPER—Kentucky All Schedule Prescription Electronic Reporting—a system that tracks those who are prescribing, dispensing and obtaining the pills. Valarie Honeycutt, *Virginia Hacker Might Affect Fla. Bill for Prescription Tracking*, LEXINGTON HERALD-LEADER, May 22, 2009, http://www.kentucky.com/latest_news/v-print/story/804054.html.

79. Blum, *supra* note 27.

80. CS for HB 897 Staff Analysis, *supra* note 15, at 2.

81. FLA. STAT. § 893.04(1) (2009).

82. *Id.* § 893.04(1)(a)–(b). Such information includes the name and address of the patient, the name and address of the prescribing practitioner, the name, strength, quantity, and directions for use of the controlled substance, and the number of the prescription. *Id.* § 893.04(1)(c)1–6.

83. *Id.* § 893.05(1).

Furthermore, Chapter 893 specifically targets doctor shoppers in section 893.13.⁸⁴ For instance, section 893.13(7)(a)8 declares it unlawful for any person:

[t]o withhold information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.⁸⁵

In *Limbaugh v. State*,⁸⁶ a widely recognized talk show host, Rush Limbaugh, was put under investigation for violating Florida's "doctor shopping" statute.⁸⁷ Police received information that individuals "had sold [Limbaugh] 'large quantities' of Hydrocodone and Oxycontin 'over the course of many years.'"⁸⁸ Police investigations then revealed that Limbaugh had received controlled substance prescriptions "from four different physicians within a five-month period."⁸⁹ With this information at hand, police officers acquired a search warrant and obtained Limbaugh's medical records.⁹⁰ Objecting to the seizure of his medical records, Limbaugh claimed that the police violated his "right of privacy in personal medical affairs."⁹¹ However, in response, the Fourth District Court of Appeal held that in this situation, "the constitutional right of privacy in medical records is not implicated by the State's seizure and review of medical records."⁹² Such strict enforcement of section 893.13 reveals the State's eagerness to prevent the widespread prescription drug problem.⁹³

However, although Chapter 893 does impose certain limitations and restrictions on controlled substance prescriptions, it has often been viewed as useless—lacking any type of prescription drug monitoring database.⁹⁴ While

84. See *id.* § 893.13.

85. FLA. STAT. § 893.13(7)(a)8. Section 893.13(7)(a)9 further declares it unlawful for any person to "acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge." *Id.* § 893.13(7)(a)9.

86. 887 So. 2d 387 (Fla. 4th Dist. Ct. App. 2004).

87. *Id.* at 389.

88. *Id.*

89. *Id.*

90. *Id.* at 390.

91. *Limbaugh*, 887 So. 2d at 390.

92. *Id.* at 398.

93. See *id.*

94. See Blum, *supra* note 27. Dr. Miguel, a University of South Florida professor of pain medicine, called such legislative inaction, "infuriating and depressing," stating, "You have to

Bill Janes, director of the Florida Office of Drug Control, discussed that, a “prescription-tracking system is not a cure-all,” he nevertheless stated that it “could help prevent doctors and pharmacists from unwittingly aiding addicts and drug dealers.”⁹⁵ Other Florida lawmakers and supporters of stricter regulations have made prescription drug monitoring a top priority.⁹⁶ Furthermore, non-Florida residents have also expressed their desire for a drug monitoring program in Florida in order to control the rampant drug trafficking link between Florida and their own states.⁹⁷ Discussing how important a Florida prescription database is to the State of Kentucky, David Mongiardo, Kentucky Lieutenant Governor, stated, “This is a major piece of legislation that we have to have in order to protect our [own] citizens.”⁹⁸

III. SECTION 893.055

A. *Legislative History*

After rejecting similar prescription drug monitoring bills for years, the Florida Legislature passed Senate Bill 462—Prescription Drugs Act—in June of 2009.⁹⁹ The new legislation requires the State to create a prescription drug monitoring database.¹⁰⁰ Sponsored by Senator Mike Fasano, among others, Senate Bill 462 creates section 893.055 and is designed to combat Florida’s problem with pill mills and doctor shopping.¹⁰¹ One of the bill’s supporters, Representative Marcelo Llorente of Miami, Florida, commented, “[T]he legislation will eliminate pill mills or pain clinics that are dispensing drugs in a ‘reckless manner and enabling the tragic deaths of countless people.’”¹⁰² Included in the text of the bill are several “whereas clauses,”

provide Florida doctors with tools so they can safely prescribe these medications and know they’re in the right hands.” *Id.* However, in Dr. Miguel’s opinion, “Right now, doctors are being made unwilling and unknowing participants in the drug trade.” *Id.*

95. *Id.* Furthermore, “if criminal activity were suspected, police could get evidence much faster.” *Id.*

96. See Blum, *supra* note 27.

97. See Honeycutt, *Virginia Hacker*, *supra* note 78.

98. *Id.* According to Kentucky officials, drug addicts and dealers in Kentucky swarm to Florida to avoid the Kentucky All Schedule Prescription Electronic Reporting System, KASPER. *Id.*

99. See LaMendola, *Governor Signs Law*, *supra* note 4.

100. See FLA. STAT. § 893.055(2)(a) (2009).

101. See CS for SB 462 Staff Analysis, *supra* note 5, at 1; Editorial, *A Bill Crist Can Sign Easily*, PALM BEACH POST, June 9, 2009, at A8 (noting that Senate Bill 462 passed unanimously in the Senate and 110 to 10 in the House).

102. Deborah Circelli, *State Targets ‘Doctor Shopping’*, NEWS JOURNAL (Daytona Beach), June 9, 2009, at C1.

explaining the purpose for creating the prescription drug monitoring system.¹⁰³

WHEREAS, it is the intent of the Legislature to encourage patient safety, responsible pain management, and proper access to useful prescription drugs that are prescribed by a knowledgeable, properly licensed health care practitioner who dispenses prescription drugs and that are dispensed by a pharmacist who is made aware of the patient's prescription drug medication history, thus preventing, in some cases, an abuse or addiction problem from developing or worsening, making such a problem possible or easier to identify, and facilitating the order of appropriate medical treatment or referral.¹⁰⁴

After passing unanimously in the Senate and 100 to 10 in the House, Senate Bill 462 was sent to Florida Governor, Charlie Crist, for approval.¹⁰⁵ Despite the cries of opponents who believed that the proposed measures would do little to "solve Florida's pill-mill problem," Governor Crist signed the legislation on June 18, 2009.¹⁰⁶

B. *Prescription Drug Validation Program*

Subsection 893.055(2)(a) requires the Department of Health, by December 1, 2010, to

design and establish a comprehensive electronic database system that has controlled substance prescriptions provided to it and that provides prescription information to a patient's health care practi-

103. CS for SB 462 Staff Analysis, *supra* note 5, at 6.

104. Act Effective July 1, 2009, ch. 2009-198, 2009 Fla. Laws 1978, 1981 (codified at FLA. STAT. § 893.055 (2009)).

105. See Editorial, *A Bill Crist Can Sign Easily*, *supra* note 101.

106. LaMendola, *Governor Signs Law*, *supra* note 4. Florida Attorney General, Bill McCollum, strongly showed his support for Senate Bill 462, sending Governor Charlie Crist a letter stating, "These crimes are occurring in every corner of our state and they must be stopped. I urge you to sign Senate Bill 462 into law and put an end to rampant prescription drug abuse." Letter from Bill McCollum, Fla. Att'y Gen., to Charlie Crist, Fla. Governor (June 8, 2009), available at <http://www.postonpolitics.com/wp-content/uploads/2009/06/pill-mill-bill-letter.pdf>.

tioner and pharmacist who inform the department that they wish the patient advisory report provided to them.¹⁰⁷

As “part of a prescription drug validation program,” the monitoring system will provide prescription information for “controlled substances in order to prevent the inadvertent, improper, or illegal use of controlled substances.”¹⁰⁸

More specifically, subsections 893.055(3)(a)–(g) require that each time a controlled substance is dispensed to a patient, the prescription information—such as the name of prescribing practitioner, date, method of payment, patient’s name, patient’s address and date of birth, and pharmacy information—must be reported through the database system.¹⁰⁹ This reporting must be done as soon as possible, “but not more than 15 days after the date the controlled substance [was] dispensed,” unless there is an approved exception.¹¹⁰

Additionally, the Florida Office of Drug Control, along with the Department of Health, “may establish a direct-support organization to provide assistance, funding, and promotional support for activities authorized for the prescription drug validation program.”¹¹¹ Once “the direct support organization receives at least \$20,000 in nonstate moneys or the state receives at least \$20,000 in federal grants for the prescription drug monitoring program,” the Department of Health will adopt the specific rules for “reporting, accessing the database, evaluation, management, development, implementation, operation, security, and storage of information within the system.”¹¹² Aside from

107. FLA. STAT. § 893.055(2)(a) (2009). Under subsection 893.055(1)(b), “[c]ontrolled substance’ means a controlled substance listed in Schedule II, Schedule III, or Schedule IV” from section 893.03. *Id.* § 893.055(1)(b).

Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid.

CS for SB 462 Staff Analysis, *supra* note 5, at 3.

108. CS for SB 462 Staff Analysis, *supra* note 5, at 1. However, this system must not interfere with good faith controlled substance prescriptions made by prescribing or dispensing practitioners or dispensing pharmacists. *Id.*

109. FLA. STAT. § 893.055(3)(a)–(g).

110. *Id.* § 893.055(4).

111. CS for SB 462 Staff Analysis, *supra* note 5, at 8.

112. FLA. STAT. § 893.055(2)(b). “All costs incurred by the department in administering the prescription drug monitoring program shall be funded through federal grants or private funding applied for or received by the state. . . . The prescription drug monitoring program and the implementation thereof are contingent upon receipt of the nonstate funding.” *Id.* § 893.055(10).

providing funding, the direct-support organization will also assist and support promotions for the prescription drug monitoring system.¹¹³

The system must comply with the standards of the American Society for Automation in Pharmacy—ASAP—and with the Health Insurance Portability and Accountability Act—HIPAA—along with any additional state and federal privacy or security laws.¹¹⁴

Furthermore, subsection 893.055(9) declares it a first degree misdemeanor offense for individuals who “willfully and knowingly fail[] to report the dispensing of a controlled substance as required by” section 893.055.¹¹⁵ However, subsection 893.055(5)(a)–(f) provides a list of those who are exempt from the reporting requirements.¹¹⁶

Pharmacies, prescribers, or dispensers will have access to the information on the database relating to a specific patient of that pharmacy, prescriber, or dispenser.¹¹⁷ However, other access to the database is limited to the prescription drug program manager or staff in furtherance of managing the monitoring program.¹¹⁸ Upon approval from the program manager, certain other entities such as the Department of Health, the Attorney General, a “law enforcement agency during active investigations regarding potential criminal activity, fraud, or theft [of] prescribed controlled substances,” or a patient or legal guardian may have direct access to the information on the monitoring database.¹¹⁹

113. *Id.* § 893.055(11)(d)7.

114. *Id.* § 893.055(2)(a).

115. *Id.* § 893.055(9).

116. FLA. STAT. § 893.055(5)(a)–(f).

(a) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session. (b) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital . . . which is licensed in this state. (c) A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections. (d) A practitioner when administering a controlled substance in the emergency room of a licensed hospital. (e) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16. (f) A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

Id.

117. FLA. STAT. § 893.055(7)(b).

118. *Id.*

119. *Id.* § 893.055(7)(c)1–4.

C. Rulemaking Authority

Along with creating section 893.055 of the *Florida Statutes*, Senate Bill 462 amended sections 458.309 and 459.005.¹²⁰ The new legislation requires “[a]ll privately owned pain-management clinics, facilities, or offices” engaged in prescribing or dispensing controlled substances for pain treatment to register with the Department of Health by January 4, 2010,¹²¹ unless the facility “is accredited by a nationally recognized accrediting agency approved by the Board of Medicine.”¹²²

The amendment to section 458.309 subjects pain clinics to annual inspections by the Department of Health to ensure proper compliance with the Board of Medicine.¹²³ Furthermore, the amendment requires the Board of Medicine to adopt rules and standards of practice for physicians involved in pain treatment.¹²⁴ Although not limited to these subjects, the rules created by the Board of Medicine must, at a minimum, address: “(a) Facility operations; (b) Physical operations; (c) Infection control requirements; (d) Health and safety requirements; (e) Quality assurance requirements; (f) Patient records; (g) Training requirements for all facility health care practitioners who are not regulated by another board; (h) Inspections; and (i) Data collection and reporting requirements.”¹²⁵

A very similar amendment to section 459.005 provides for the same rules and regulations, but it applies to the Board of Osteopathic Medicine, rather than the Board of Medicine.¹²⁶

IV. OPPONENTS OF SECTION 893.055

A. The Critics’ Perspectives

Representative Carl Domino of Jupiter, Florida was among the ten Florida State Representatives who voted against Senate Bill 462.¹²⁷ Representa-

120. Act effective July 1, 2009, ch. 2009–198, 2009 Fla. Laws 1978, 1992–93 (codified at FLA. STAT. § 839.055 (2009)). Subsections (4), (5), and (6) were added to section 458.309, and subsections (3), (4), and (5) were added to section 459.005. *Id.*

121. *Id.*; FLA. STAT. §§ 458.309(4)–(6), 459.005(3)–(5) (2009).

122. Ch. 2009–198, 2009 Fla. Laws, at 1992–93.

123. FLA. STAT. § 458.309(4)–(6). Under section 459.005, “Board of Medicine” is referred to as “Board of Osteopathic Medicine.” *Id.* § 459.005.

124. *Id.* § 458.309(5).

125. *See id.* § 458.309(5)(a)–(i).

126. *Id.* § 459.005.

127. Editorial, *A Bill Crist Can Sign Easily*, *supra* note 101.

tive Domino, the sponsor of a competing bill, House Bill 143,¹²⁸ feels that section 893.055 is “designed not to work,” and that the legislation “creates a false sense of security.”¹²⁹ Joining in the fight against Senate Bill 462 are many vocal lawmakers, drug experts, and citizens who have expressed similar concerns.¹³⁰

Chief among the critics’ concerns with the new legislation is the potential for security breaches.¹³¹ Although section 893.055 gives the Department of Health until December 1, 2010 to design the specific requirements for the electronic database system, the legislation does list certain minimum information that *must* be included in the database.¹³² It is the personal and medical information—name, address, date of birth, method of payment, prescription quantity and strength, for example—that has people worried about violations of privacy rights and the potential for abuse.¹³³ Representative Domino warned, “Think of the consequences of an out-of-control state employee who chooses to access this database and make public highly sensitive personal information. Even more troubling is the potential for hackers to infiltrate.”¹³⁴

1. Virginia Hacker

Ironically, amidst a push for Governor Crist to veto section 893.055, these very same privacy concerns became reality for the citizens of Virginia.¹³⁵ According to reports, “the records of 8 million patients were stolen from Virginia’s prescription-monitoring system when a computer hacker

128. *Domino/Aronberg Prescription Drug Validation Plan Saves Lives, Protects Privacy, Costs Less*, PR NEWswire, Mar. 24, 2009 [hereinafter *Prescription Drug Validation Plan*]. Senate Bill 614, sponsored by Senator Dave Aronberg of Greenacres, Florida, is the analogous Senate version of Representative Carl Domino’s House Bill 143. *Id.*

129. Editorial, *A Bill Crist Can Sign Easily*, *supra* note 101.

130. See Circelli, *supra* note 102.

131. See Letter from Ellyn Bogdanoff et al., State Representatives, Fla. House of Representatives, to Charlie Crist, Fla. Governor, (May 7, 2009), available at <http://blogs.tampabay.com/files/letter-to-governor-crist.pdf> [hereinafter Letter from Ellyn Bogdanoff et al., to Charlie Crist].

132. See FLA. STAT. § 893.055(3)(a)–(g) (2009).

133. See *id.*; see also Letter from Ellyn Bogdanoff et al., to Charlie Crist, *supra* note 131.

134. Carl Domino, *Guest Columnist: Correct Method Needed to Curb Doctor Shopping*, TCPALM, Apr. 17, 2009, available at <http://www.tcpalm.com/news/2009/apr/17/correct-method-needed-to-curb-doctor-shopping/>.

135. See Honeycutt, *Virginia Hacker*, *supra* note 78. “[O]n April 30, the same day that the Florida General Assembly passed legislation to create a monitoring system, [a] hacker posted a message on Virginia’s monitoring system saying he had stolen millions of prescription records.” *Id.*

broke into it and demanded a \$10 million ransom.”¹³⁶ Although it is reported that the Virginia database contained no patient medical histories, the database “does list names, addresses, and in some cases, Social Security numbers of patients who received prescriptions for painkillers, such as OxyContin.”¹³⁷

Prompted by the hacking incident in Virginia, thirteen Florida lawmakers urgently sent Governor Charlie Crist a letter on May 7, 2009, expressing their concerns.¹³⁸

We respectfully request that you veto Senate Bill (SB) 462 entitled Prescription Drugs/Electronic Monitoring/DOH. This request is based on a well founded fear that the sensitive personal and medical information contained in such a database would be susceptible to cyber terrorists and criminals who would use such information against the citizens of Florida. . . . Unfortunately, our fears were reinforced this past week when hackers broke into a Virginia database, similar to the one proposed by SB 462, used to track prescription drug abuse. . . . While proponents of SB 462 promise a secure database, any online security expert will tell you there is no such thing as a completely secure database. . . . By allowing Senate Bill (SB) 462 to become law . . . you will expand government further into the private lives of our citizens, and *seriously undermine the safety and security of Floridians’ personal and private medical records.*¹³⁹

However, Representative Kelly Skidmore of Boca Raton, Florida, who co-sponsored Senate Bill 462, addressed these concerns and discussed how under the proposed system, the names of the buyers, the drugs, and the dates

136. *Id.* Furthermore, the hacker threatened that if he didn’t get the money, “he would sell the information to the highest bidder.” *Id.*

137. *Id.* The Virginia database “has not been operational since” the incident. Honeycutt, *Virginia Hacker*, *supra* note 78.

138. *See* Letter from Ellyn Bogdanoff et al., to Charlie Crist, *supra* note 131.

139. *Id.* (emphasis added). Representative Carl Domino, one of the individuals who signed the letter to Governor Crist, sent a similar e-mail to Bill Janes, Director of Florida Office of Drug Control, and supporter of Senate Bill 462. *See* E-mail from Carl Domino, Florida State Representative, Dist. 83, to Bill Janes, Director, Florida Office of Drug Control (May 7, 2009, 3:46:21 PM), *available at* <http://www.postonpolitics.com/wp-content/uploads/2009/05/from-rep-carl-domino-district-83.pdf>. In this e-mail, Representative Domino pleads:

I am now asking you to join me in asking the Governor to veto [Senate Bill] 462 as it clearly poses a significant risk to constitutionally[sic] guarantees of privacy for our citizens. If you still feel that the bill should go into law please advise me why and what steps you propose to take to ensure that the Florida data base does not have similar risks.

Id.

would be separate.¹⁴⁰ Representative Skidmore stated, "Even if someone hacked the system . . . they could get only one piece."¹⁴¹

2. Other Potential Loopholes in Section 893.055

Aside from the possibility of invading one's privacy, section 893.055 of is thought by some to be deficient in other areas as well.¹⁴² For instance, although the bill went into effect July 1, 2009, the Department of Health has until December 1, 2010 to create the rules and procedures for implementing the electronic database.¹⁴³ Paul Sloan, a Venice pain clinic owner and organizer of the Florida Society of Pain Management Providers, says, "The bill is useless as it is now . . . [and] will be ineffective in shutting down pill mills. Pill mills will be completely unaffected."¹⁴⁴ Additional time-related concerns stem from the fact that "[e]ach time a controlled substance is dispensed to an individual, the controlled substance shall be reported to the department . . . not more than 15 days after the date the controlled substance is dispensed."¹⁴⁵ With this delay, critics warn that "[s]ellers have 14 days to [log] a prescription, giving abusers plenty of time to make the rounds obtaining drugs before anyone can catch on."¹⁴⁶

Also, critics worry that the legislation does nothing to prevent buyers from using fake identification to obtain and hide multiple buys.¹⁴⁷ Furthermore, the penalty for a seller who skips entering prescriptions into the database is a mere misdemeanor.¹⁴⁸

Lastly, patients with legitimate medical needs fear the effects this new legislation will have on the availability and accessibility of treatment.¹⁴⁹

140. Editorial, *A Bill Crist Can Sign Easily*, *supra* note 101.

141. *Id.*

142. See *Prescription Drug Validation Plan*, *supra* note 128.

143. See FLA. STAT. § 893.055(2)(a) (2009).

144. LaMendola, *Governor Signs Law*, *supra* note 4.

145. See FLA. STAT. § 893.055(4); see also LaMendola, *Governor Signs Law*, *supra* note 4.

146. LaMendola, *Governor Signs Law*, *supra* note 4.

147. *Id.*

148. *Id.*; see also FLA. STAT. § 893.055(9).

149. See Blum, *supra* note 27. However, addressing these concerns, a "whereas clause" from Senate Bill 462 states:

[T]he intent of this act is not to interfere with the legitimate medical use of controlled substances; however, the people of this state are in need of and will benefit from a secure and privacy-protected statewide electronic system of specified prescription drug medication information created primarily to encourage safer controlled substance prescription decisions that reduce the number of prescription drug overdoses and the number of drug overdose deaths . . .

Act Effective July 1, 2009, ch. 2009-198, 2009 Fla. Laws 1978, 1980 (codified at FLA. STAT. § 893.055 (2009)).

Because pain treatment is often impossible to measure objectively, critics worry that the new legislation may inadvertently prevent those who truly need the drugs from being able to obtain a prescription.¹⁵⁰

B. *Alternative Options: Biometric Identification*

Although supporters and opponents of the bill share a common goal—the monitoring and regulation of prescription drug abuse—they disagree about the best method to achieve this goal.¹⁵¹ Florida House Bill 143, Monitoring the Dispensing of Controlled Substances,¹⁵² proposes an alternative to Senate Bill 462.¹⁵³ Under House Bill 143, the database system would use biometric identification technology to immediately monitor the dispensing and purchasing of dangerous drugs.¹⁵⁴ Although House Bill 143, sponsored by Representative Carl Domino of Jupiter, died in Committee on Health Care Regulation Policy, its innovative technological approach to the prescription drug war opens the doors for discussion.¹⁵⁵

The biometric identification system proposed under House Bill 143 would “require dispensers to use . . . biometric scanning devices—fingerprints or retinal scans, for example—to biologically identify people attempting to fill prescriptions for . . . controlled substances.”¹⁵⁶ A Florida Department of Health database would “assign a unique identification number to the biometric scan” while simultaneously “convey[ing] this information back to the prescriber.”¹⁵⁷ This unique identification number would provide pharmacists or dispensers with immediate detection of prescription conflicts, overlaps, and fraud.¹⁵⁸ Because the encrypted information in the biometric database would be assigned a number rather than a name, proponents feel this measure fights fraud and ensures patient safety more efficiently than section 893.055.¹⁵⁹ Furthermore, supporters of the proposed bill assure that

150. See Blum, *supra* note 27.

151. See Domino, *supra* note 134 (discussing an alternative proposal for prescription drug monitoring).

152. H.R. 143, 2009 Leg., Reg. Sess. (Fla. 2009).

153. See *id.* Proposed by Senator Dave Aronberg, Senate Bill 614 was the analogous version of House Bill 143. LaMendola, *Profiting from Pain*, *supra* note 52.

154. See Domino, *supra* note 134.

155. See Fla. H.R. 143.

156. *Prescription Drug Validation Plan*, *supra* note 128.

157. *Id.*; see also Fla. H.R. 143.

158. *Prescription Drug Validation Plan*, *supra* note 128.

159. Dara Kam, *Lawmaker's Measure Would Drive Drug ID Business to One Firm*, PALM BEACH POST, Feb. 6, 2009, at A1. Calling the alternative legislation, section 893.055 of the *Florida Statutes*, “old-fashioned,” Representative Domino stated, “Our stronger approach precludes the filling of multiple prescriptions. The biometric identification would be re-

even if someone hacked into the database, the advanced technology of the biometric system would prevent individual identities from being revealed.¹⁶⁰

However, looking beyond the novelty of this proposed method, opponents such as pharmacists are troubled by the costs to implement the biometric database.¹⁶¹ The biometric identification equipment could cost anywhere “from \$300 to \$700 per unit,” along with the regular “monthly software subscription service” which could cost between \$50 and \$150.¹⁶² But, supporters believe this is but a small price to pay for the lives that will be saved:

Well-heeled supporters of the old technology have thrown up roadblocks against the new state-of-the-art system. Some have argued that the small cost would cripple their profits. It amazes me that anybody would fight for profits while people are dying. Lives are on the line. It's critical for Florida to get this right. We can choose the worn-out approach and, after more people die and privacy is compromised, come back in a couple of years and fix it. Or we can take the right path, protect privacy, curb doctor shopping and save lives.¹⁶³

According to Senator Aronberg, “Patients shouldn’t have to fear the prescriptions they are taking to make them well. This legislation creates a 21st century safety net to ensure the drugs they are given are just what the doctor ordered.”¹⁶⁴ Similarly, Representative Carl Domino commented, “New technology is less costly, protects consumer privacy, and is in real time and cannot be defeated by a false identification.”¹⁶⁵ However, despite the pleas from advocates urging lawmakers to adopt this alternative biometric identifying database system, section 893.055 of the *Florida Statutes* went into effect on July 1, 2009.¹⁶⁶

quested and entered on a *real-time* basis to an anonymous database, thereby alerting a pharmacist filling an additional prescription.” Domino, *supra* note 134 (emphasis added).

160. See *Prescription Drug Validation Plan*, *supra* note 128.

161. See Kam, *supra* note 159. Additionally, opponents allege that only one company, Bio-Tech Medical Software Inc., has the resources to carry out the bill’s requirements. *Id.* If that is true, and drugstores are required to buy that company’s biometric identification equipment and software, then Bio-Tech “has the potential to earn at least \$30 million in the first year.” *Id.*

162. *Id.*

163. Domino, *supra* note 134.

164. Press Release, Dave Aronberg, Fla. Senator, Floridians to Gain New Safeguards Against Prescription Drug Errors Under Aronberg Legislation (Feb. 4, 2009), available at <http://www.flsenate.gov> (follow “Senators Members Pages” hyperlink, then “Aronberg, Dave” hyperlink, then “Press Releases” hyperlink, then “February 4, 2009” hyperlink).

165. *Prescription Drug Validation Plan*, *supra* note 128.

166. See LaMendola, *Governor Signs Law*, *supra* note 4.

While some critics remain skeptical about the new legislation, others are satisfied that at least some measures have finally been taken to combat the prescription drug war.¹⁶⁷ Daytona Beach Police Chief, Mike Chitwood, mentioned that he would prefer the fingerprinting system, “but [he will] take anything [he] can get [his] hands on now.”¹⁶⁸ Similarly, Senator Aronberg stated, “We need to ensure that Florida’s system uses top-of-the-line technology to eliminate the threat from hackers. The bill I proposed would have done so, and the bill that ultimately passed, can do so as well.”¹⁶⁹ Former Governor of Florida, Jeb Bush, applauded lawmakers for passing the bill and commented that he had not “seen the details, . . . but if it is comprehensive and implemented correctly, it will save lives.”¹⁷⁰

V. LOOKING FORWARD

With the Department of Health having until December 1, 2010 to design and establish the comprehensive electronic database system, what will happen in the meantime to the tourist-friendly pill mills and drug-seeking doctor shoppers? On July 27, 2009, just weeks after the legislation went into effect, local Florida newspapers reported that pain clinics already began experiencing a drop in business.¹⁷¹ After P.S. Drugs, a Fort Lauderdale pharmacy, posted notices that it would “no longer fill certain prescriptions for out-of-state visitors,” Bruce Derby, the manager of the pharmacy, reported that “[b]usiness has dropped about 20 percent in the past month.”¹⁷² However, for vigilant law abiders like Derby, the drop in business is worthwhile if it prevents prescription pill traffickers from coming to Florida to obtain drugs.¹⁷³

Although many other pharmacies have adopted similar policies barring out-of-state residents from obtaining prescriptions,¹⁷⁴ this practice may too have its drawbacks.¹⁷⁵ For instance, Florida is home to many winter residents and extended-stay tourists who may have no other access to prescrip-

167. See Editorial, *A Bill Crist Can Sign Easily*, *supra* note 101.

168. Circelli, *supra* note 102.

169. Posting of Michael C. Bender to Post on Politics, <http://www.postonpolitics.com/2009/05/virgina-prescription-drug-database-hacked/> (May 5, 2009, 12:35 EST).

170. *Id.*

171. See Sofia Santana, *Smaller Drugstores Turn Away Traffickers – Florida Identification Required for Pain Pills*, SUN-SENTINEL, July 27, 2009, at 1A.

172. *Id.*

173. See *id.* Derby stated, “It’s about having a feeling of comfort about not filling those prescriptions.” *Id.*

174. See *id.*

175. See Santana, *supra* note 171.

tions.¹⁷⁶ Also, not every out-of-state tourist who visits a Florida pain clinic has doctor shopping in mind; some tourists have legitimate medical needs.¹⁷⁷ Furthermore, without servicing non-Florida residents, the smaller “mom-and-pop pharmacies” may find it hard to compete with the larger national chain pharmacies.¹⁷⁸

However, not all pain clinics have experienced a drop in business since the enactment of section 893.055.¹⁷⁹ In early March, 2010, agents from a regional task force raided three South Florida pain clinics that brought in over fourteen million dollars in cash within the past year.¹⁸⁰ While agents seized truckloads of reports, computers, and pain clinic paraphernalia, confused drug seekers continuously arrived and quickly left throughout the day.¹⁸¹

Recognizing that it may be years before section 893.055 of the *Florida Statutes* takes full effect, some cities, like Dania Beach, are currently in the process of adopting and implementing city rules to discourage future pill mill pain clinics from opening.¹⁸² In Dania Beach, the proposed law would prevent future pain clinics from opening in redevelopment areas of the city, mainly tourist and shopping areas.¹⁸³ Furthermore, the law would prevent on-site dispensing of pain medication—a service typically geared towards doctor shoppers.¹⁸⁴ While awaiting the effects of the proposed law, Dania Beach already issued a moratorium, or freeze, on pain clinics in April of 2009.¹⁸⁵ Other cities, like Coconut Creek and Oakland Park, appear interest-

176. *Id.*

177. *Id.*

178. *Id.* For some struggling, smaller, and independent pharmacies, “the only way they’re surviving is by putting out oxycodone,” stated Broward Sheriff’s Office Sergeant, Richard Pisanti. *Id.*

179. See Santana, *supra* note 171. After passing unanimously in the Senate and 100 to 10 in the House, Senate Bill 462 was sent to Florida Governor, Charlie Crist, for approval. Editorial, *A Bill Crist Can Sign Easily*, *supra* note 101. Despite the cries of opponents who believed that the proposed measures would do little to “solve Florida’s pill-mill problem,” Governor Crist signed the legislation on June 18, 2009. LaMendola, *Governor Signs Law*, *supra* note 4.

180. Bob LaMendola, *Pain Pills Worth Millions to 3 Clinics*, SUN-SENTINEL, Mar. 5, 2010, at 1D.

181. See *id.*

182. See Ihosvani Rodriguez, *Dania Expected to OK Pain Clinic Curbs Today – Measure Would Prohibit the Dispensing of Pills and Restrict Locations*, SUN-SENTINEL, July 28, 2009, at 1B. According to the Sun-Sentinel, Dania Beach would “become the first [city] in Broward [County] to pass a law clamping down on pain clinics, limiting where they may open and prohibiting them from dispensing pills.” *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

ed in taking similar measures.¹⁸⁶ Dania Beach Mayor, Anne Castro, believes that “everyone is going to start adopting these laws soon.”¹⁸⁷

Furthermore, although the Department of Health must wait until sufficient funds have been raised to set up the electronic database system, the Department has already begun implementing other aspects of the law.¹⁸⁸ The Florida Boards of Medicine and Osteopathic Medicine recently appointed seven Florida doctors¹⁸⁹ to handle the rule-making procedures, specifically, designing the state-wide registration requirements for pain practitioners.¹⁹⁰ The new legislation requires all privately owned clinics advertising pain-management services, or employing physicians that treat pain by prescribing or dispensing controlled substances, to register with the state and undergo regular inspections.¹⁹¹ Not only will the panel develop the applications for pain clinics to register with the state, but also “[i]t will decide health and safety requirements, the kinds of data clinics will have to report, how inspections will be conducted and what the fees will be.”¹⁹² As of January 2010, about four hundred pain clinics had registered with the Florida Department of Health, disclosed their owners, and prepared for inspection.¹⁹³ Chairman of the state panel, Fred Bearison, optimistically reported, “[t]hey are going to get inspected every year, and the inspectors can make sure they are following the new guidelines we set up—and that’s going to help keep them in line.”¹⁹⁴

VI. CONCLUSION

Following the grim statistics from the past decade, Florida lawmakers and officials had no choice but to take stronger action against prescription drug abuse. With the enactment of section 893.055 of the *Florida Statutes*, it appears that Florida has made progress in its fight against the prescription

186. Rodriguez, *supra* note 182. In September, officials in Coconut Creek will evaluate a previously imposed moratorium on similar pain clinics. *Id.* Meanwhile, Oakland Park, home to “18 pain clinics within a two-mile radius,” considered a moratorium, but decided against it because of the difficulty in distinguishing between pill mills and legitimate medical clinics. *Id.*

187. *Id.*

188. Carol Gentry, *Doctors to Set Limits on Pain Clinics*, HEALTH NEWS FLA., July 28, 2009, <http://www.healthnewsflorida.org/index.cfm/go/public.articleView/article/13136>.

189. *Id.* The seven doctors include: Fred Bearison, Robert Cline, Onelia Lage, Steven Rosenberg, John Beebe, Allan R. Escher, and Robert McCann. *Id.*

190. *Id.*

191. *Id.*

192. Gentry, *supra* note 188.

193. Bob LaMendola, *Pain Clinic Clean-Up Begins-400 Join Registry, but Many Don't Bother*, SUN-SENTINEL, Jan. 6, 2010, at 1D.

194. *Id.*

drug problem. Although the critics of this legislation have expressed legitimate concerns, many nonetheless remain hopeful that section 893.055 is a step in the right direction. Joined by a common goal—the control of prescription drug diversion—supporters and opponents of the new legislation agree that *something* needed to be done to end the prescription drug war in Florida. Critics and supporters alike recognize that section 893.055 will not automatically fix prescription drug abuse. Palm Beach County Sheriff's Office narcotics agent, Robert Banuchi, stated, "It's not a cure-all, and we still have to get it up and running."¹⁹⁵ It may take weeks, months, or even years for section 893.055 to make a substantial impact on Florida's prescription drug problem. However, section 893.055—if nothing else—provides a stepping stone for the proactive measures that Florida *must continue to take* to stop prescription drug abuse.

195. Tonya Alanez & Sofia Santana, *Law to Combat Black Market 'Pill Mills'*, SUN-SENTINEL, May 1, 2009, at 1B.